

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
Truth-in-Billing  
and  
Billing Format

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CC Docket No. 98-170

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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Date: November 13, 1998

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### SUMMARY

Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the proposal of the Federal Communications Commission ("Commission") to regulate telecommunications carriers' billing practices. Nextel opposes any reflexive proposals to extend regulations -- essentially aimed at resolving billing problems in the wireline industry -- to competitive wireless telecommunications service providers. To date, there is no evidence that the Commission's concerns regarding billing practices are prevalent in the wireless industry. In fact, nowhere in the Notice does the Commission single out wireless providers in discussing any billing-related consumer concerns.

The wireless industry is significantly different from the wireline industry in ways that require distinct analysis as to the appropriateness of uniform regulations for the wireline and wireless industries. This is a point that wireless carriers have made in other Commission proceedings, and it is one that applies here particularly. Wireline-induced regulatory actions concerning billing practices, procedures and formats should not simply be rubber-stamped onto the competitive wireless industry without a compelling showing of need and a persuasive, wireless-specific, cost-benefit analysis. It is not sufficient for the Commission to simply assume all telecommunications carriers should be treated alike, regardless of their unique characteristics.

In the wireless industry, a carrier's ability to provide a "user-friendly" customer bill is a competitive factor that

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customers evaluate in choosing and/or retaining a wireless provider. A carrier that provides a confusing or misleading monthly bill risks losing customers to another provider offering similar wireless services with more responsible billing. Thus, the marketplace, not the government, is ensuring that wireless carriers craft and process bills that are designed to inform and retain customers; not confuse or mislead them.

Because the Commission has not provided any justification for imposing any bill disclosure or bill formatting regulations on wireless providers, the Commission should refrain from such regulation until there is a demonstrated need. The Commission can protect wireless consumers from fraudulent and inappropriate carrier behavior through its enforcement powers. However, to the extent the Commission nonetheless imposes invasive billing regulations on wireless carriers for the purpose of protecting consumers, the Commission should provide carriers a cost recovery mechanism similar to that provided for wireless Enhanced 911 services.

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**COMMENTS OF NEXTEL COMMUNICATIONS, INC.**

**I. INTRODUCTION**

Pursuant to the Federal Communications Commission's ("Commission") Notice Of Proposed Rule Making ("Notice") in the above-referenced proceeding,<sup>1/</sup> Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the Commission's proposal to regulate telecommunications carriers' billing practices. Nextel opposes any reflexive proposals to extend regulations -- essentially aimed at resolving billing problems in the wireline industry -- to competitive wireless telecommunications service providers.

The Commission states that its proposed rules are necessitated by, among other things, the absence of certain information on bills, the placement of third-party charges on bills, its perception that telecommunications billing has not kept pace with the changing telecommunications marketplace, and the tremendous

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<sup>1/</sup> Notice of Proposed Rule Making, FCC 98-232, released September 17, 1998.

growth in customer complaints, including cramming and slamming.<sup>2/</sup> None of these problems, however, is prevalent in the wireless telecommunications industry. In fact, nowhere in the Notice does the Commission single out wireless providers in discussing particular billing-related consumer issues. Wireless carriers, for example, typically do not bill on behalf of third-parties in the way Local Exchange Carriers ("LECs") do for Interexchange Carriers ("IXCs"). The Commission has provided no evidence of any systematic slamming or cramming problems in the wireless industry, and wireless carriers (the majority of which are relatively new players in the marketplace) have powerful marketplace incentives to continuously update and improve their billing systems to service their expanding multi-state mobile networks.

The wireless industry is significantly different from the wireline industry in ways that require distinct analysis as to the appropriateness of uniform regulations for the wireline and wireless industries. While this is a point that wireless carriers already have made in other Commission proceedings, it is one that applies here particularly.<sup>3/</sup> Wireline-induced regulatory actions concerning billing practices, procedures and formats should not

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<sup>2/</sup> Notice at paras. 1-3.

<sup>3/</sup> See, e.g., Reply to Opposition of Comcast, filed July 6, 1998, in CC Docket No. 96-115, the Commission's proceeding on the use of Customer Proprietary Network Information ("CPNI"). See also Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 98-278, released October 26, 1998, seeking comment on how wireless carriers should calculate their federal Universal Service Fund contributions, given the differences in wireless and wireline networks' capabilities for tracking interstate and intrastate revenues.

simply be rubber-stamped onto the competitive wireless industry. There first must be a compelling showing of need and a persuasive, wireless-specific, cost-benefit analysis. It is not sufficient for the Commission to simply assume all telecommunications carriers should be treated alike, regardless of their unique characteristics.

Additionally, the Commission should refrain from imposing new rules and regulations governing activities that it already has the authority to prevent via its enforcement powers. Rather than regulating billing practices that in-and-of-themselves are a competitive customer-retention tool in the wireless industry, the Commission should allow companies to aggressively compete in the marketplace and then impose forfeitures, where necessary, using its enforcement powers to address any egregious behavior. To the extent the Commission chooses, however, to impose costly new rules and regulations on wireless carriers for the purpose of protecting consumers from fraudulent and misleading billing practices, the Commission should establish a cost recovery mechanism similar to that provided wireless carriers for offering Enhanced 911 ("E911") services.

## **II. BACKGROUND**

Nextel is the Nation's largest provider of Specialized Mobile Radio ("SMR") services, providing advanced digital telecommunications services in over 400 cities nationwide. Nextel's digital SMR services offer consumers a package of wireless services, including among other things, cellular telephone, paging,

voice mail and Direct Connect<sup>sm</sup> communications. Direct Connect is Nextel's enhanced version of traditional dispatch, or push-to-talk, services that are typically employed by businesses with fleets of personnel that need to maintain communications contact. The Direct Connect service allows users to access any other member of their "fleet" on a one-to-one ("private call") basis, or on a one-to-many ("group call") basis.<sup>4/</sup>

Given the integrated nature of Nextel's services offering, Nextel has, to date, attracted significantly more business customers than residential/individual consumers. This business-user focus puts Nextel in a somewhat unique position concerning billing practices vis-a-vis other wireless carriers with larger numbers of individual users. The business customer choosing Nextel typically is more sophisticated than the individual consumer, and is likely to purchase several subscriber units, all of which are billed to the single business/employer account. Nextel has learned through customer feedback and focus groups that its business customers are most concerned about issues unrelated to those raised in the Notice. Rather than seeking additional information on particular charges, Nextel's business customers value billing information organized to set forth the airtime, usage and other charges associated with each and every subscriber unit on the

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<sup>4/</sup> In addition to these integrated wireless services, Nextel's affiliate, NXLD Company, recently launched resold landline long distance services in nearly every state. A customer subscribing to Nextel's wireless service and NXLD's resold interexchange service receives an integrated bill with a separate section devoted to the customer's NXLD charges -- just as suggested in the Notice.



account, thus enabling them to better manage their employees' wireless usage. The danger of reflexively applying "one size fits all regulation" is that to comply, Nextel might be required to cease utilizing the billing format its customers prefer. This would impose costly burdens on Nextel, and eventually its customers, without addressing the problems raised in the Notice.

Nextel continues to build out its nationwide digital wireless network and currently is providing service to over two million customers nationwide. Given the increasing competition in the wireless industry -- in particular, the increasing number of digital service providers in every market -- Nextel is continuously striving to improve the quality of its services, from both a technological and customer care standpoint. In the wireless industry, billing -- just like service quality, rates and coverage -- is a customer retention issue. Customers' bills, therefore, must be designed to retain customers, not confuse them. In response to competition, Nextel conducts ongoing reviews of its billing system to ensure it meets customers' expectations. Nextel submits that the same is true for other competing wireless carriers, thus making adoption of the Commission's proposals unnecessary in the wireless market.

### **III. DISCUSSION**

#### **A. The Commission Must Distinguish the Wireless Industry From the Wireline Industry**

The Commission's failure to distinguish the wireless industry from the wireline industry, and therefore appreciate the differing impacts its rules have on each industry, has already resulted in

arbitrary rules and standards that do not improve wireless services, and on the contrary, make them more costly and more complex. To avoid repetition of this problem, the Commission must evaluate its proposed billing regulations, recognizing that the wireless industry will be adversely affected by "one-size-fits-all" regulations tailored to address problems that have cropped up in the wireline market.

The wireless industry is growing increasingly competitive everyday. Unlike customers in a long-term monopoly industry, such as the LEC marketplace that is still characterized by highly regulated monopoly carriers, wireless customers are highly aware that they have multiple service alternatives. Wireless carriers enter into service agreements with their customers that set forth the terms and conditions of the services, and the rates that are applicable to each. Wireless customers, therefore, have notice of their set monthly wireless access charges, their airtime charges and other terms and conditions of service. Because the monthly bill -- just like any other aspect of wireless service, e.g., coverage, quality, customer care, rates and promotions -- is a competitive factor that customers evaluate in choosing and/or retaining a wireless provider, a carrier that issues a confusing or misleading monthly bill risks losing that customer to another provider offering similar wireless services with more responsible billing. Thus, the marketplace, not the government, is ensuring that wireless carriers craft and process bills that are designed to inform and retain customers.

In addition to being a competitive market, the Commission should consider that wireless industry competition is relatively new. The Commission did not begin granting Personal Communications Service ("PCS") licenses until 1995, and Nextel only initiated its nationwide service launch in 1996. Thus, cellular carriers have been faced with aggressive competition for just over two years. The Commission should provide the wireless industry an opportunity to receive ongoing customer feedback on its billing practices before attempting to regulate this competitive component of wireless services. If and when the Commission determines through empirical evidence that competition alone does not protect wireless consumers from confusing and misleading bills, it can reconsider the application of these proposed rules to wireless carriers. At this time, however, the Commission has not demonstrated that imposing any bill disclosure or bill formatting regulations on wireless providers is warranted.

For purposes of the Commission's proposed billing regulations, the wireless industry is further distinguished from the wireline industry in that most of the problems raised in the Notice relate to the enormous regulatory changes brought about by the Telecommunications Act of 1996 ("1996 Act"). Unbundling of networks, access charge reform, and explicit payment of Universal Service Fund ("USF") charges, among other things, have given rise to changes in telecommunications carriers' billing practices -- the very changes addressed in the Notice. However, those changes have not occurred in the wireless industry.

Since the 1996 Act, many wireless carriers have added a USF charge on their bills -- a charge not previously collected by wireless carriers, either explicitly or implicitly. However, there is little evidence that the wireless industry has attempted to confuse or mislead customers about this charge. Nextel, for one, has chosen to separately state the charge as the Universal Service Assessment and provide customers with an explanation of its origin and its purpose,<sup>5/</sup> concluding that the public interest, and its own customers, are better served by having full information about the assessment and the important public policy objectives it will be used to fund, and knowing the specific monthly amount added to their bill. Providing such information, rather than simply burying the charge in a rate increase, is more consistent with the Commission's goals of full disclosure and accurate consumer information.

Additionally -- cramming and slamming -- two consumer complaints giving rise to the Notice -- are generally unknown in the wireless industry. Nowhere in the Notice did the Commission demonstrate that wireless carriers are "switching" subscribers to other providers or burying undisclosed or unjustified charges on

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<sup>5/</sup> Nextel provided its customers the following explanation via a bill message: "Federal Universal Service Fund. In accordance with the Telecommunications Act of 1996, the Federal Communications Commission ("FCC") adopted rules to create a Universal Service program. The objective of this program is to ensure that affordable, quality telecommunications services are available to all Americans. To achieve the program goals, beginning this month, your bill will include a one percent monthly Federal Universal Service Fund charge. All Federal, state and local taxes are computed in accordance with the appropriate tax laws."

wireless bills.<sup>6/</sup> The Commission, therefore, should not attempt to "resolve" problems that simply do not exist in the wireless marketplace. In short, the wireless industry does not have the same legacy of rate of return and/or price-cap regulation that causes consumer confusion when implicit charges or elements are unbundled. Accordingly, the Commission's truth-in-billing proposals, designed for the wireline industry, are ill-suited to wireless application.

In addition to its failure to justify imposition of billing regulations on wireless carriers, the Commission failed to propose specific rules upon which carriers could assess the potential impact of such regulation on their operations. This lack of specificity prevents carriers from accurately assessing the potential impact -- positive or negative -- on their customers. Thus, no cost-benefit analysis of the proposed regulation is possible -- a fatal flaw in the proposal. In any case, the Commission's inability to identify billing problems in the wireless industry, fundamentally undermines the need for Commission intrusion into wireless carriers' billing practices.

**B. Wireless Systems Present Billing Challenges Not Relevant to Wireline Networks**

Wireless systems, unlike landline systems, are multi-state, regional and even nationwide networks designed to meet customer

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<sup>6/</sup> The wireless industry has no comparable process to the presubscription process for selecting an interexchange carrier that has resulted in slamming. Wireless carriers are not subject to equal access requirements, and in many cases, therefore, do not offer subscribers a choice of interexchange carrier.

demand for ubiquitous regional or nationwide service, that operate in disregard of political boundaries. It is often not clear where a mobile call begins and ends, and even if it were, there is no guarantee that a mobile call will maintain the same origination and termination characteristics throughout a call. Cell sites, moreover, do not operate with regard for political boundaries, thus increasing the complexities of billing and, in particular, properly assessing taxes on each and every mobile call. As a result, wireless billing systems must capture and rate mobile calls on complex, multi-state networks entirely unknown to the landline industry.

Thus, the most significant practical difference between wireline and wireless carriers is the fact that wireless users are mobile -- their service is not tied to a particular geographic point or boundary. Users can "roam" on the systems of other wireless providers or, as in Nextel's case, "roam" throughout its nationwide all-digital network; *i.e.*, use the service in areas outside their home areas. Because wireless systems operate without regard to such boundaries, numerous complexities exist in wireless billing that do not exist in wireline billing.

The most prominent complexity created by the mobile nature of wireless services is the application of taxes to wireless users. The difficulty in tracing a mobile call's origination and termination point, the complexity of following a call as a mobile user traverses multiple jurisdictions, and the inability to pinpoint the exact location of a mobile user exacerbates the

problems in assessing the myriad taxes, fees and surcharges imposed by state, county, township and municipal governments. As wireless telecommunications services have grown increasingly popular, state and local governments have seized on them as a new revenue resource, resulting in a proliferation of taxes on these services.

To truly simplify customer billing in the wireless marketplace, the Commission should press Congress and the states to enact "single-tax-rate-per-state" and "uniform sourcing" rules, both proposals of the wireless industry to simplify the taxing process for wireless/mobile communications.<sup>7/</sup> Congress has recognized the importance of simplifying state and local taxes in the wireless telecommunications industry.<sup>8/</sup> A single tax rate per state and uniform sourcing would move the industry toward such simplification. This is another important aspect of the differences between wireless and wireline services that must be understood in assessing the need for and potential nature of truth-in-billing regulation of wireless services.

**C. The Commission Has Sufficient Authority To Protect Consumers From Fraudulent Billing Practices**

Additionally, there is no need for the Commission to regulate carriers' billing operations because it has sufficient enforcement

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<sup>7/</sup> Rosen, Arthur R., Proposal for Uniform Sourcing of Mobile Telecommunications Transaction Taxes, Tax Analysts, State Tax Today (September 12, 1997).

<sup>8/</sup> See "Internet Tax Freedom Act," at Section 1102 (g) (2) (F), mandating that the Advisory Commission on Electronic Commerce conduct "an examination of ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services." H.R. 4328 Conference Report, 105th Cong., 2d Sess. at page 1795.

authority to prevent fraudulent or misleading billing practices. Pursuant to its enforcement authority, the Commission can discipline carriers engaging in fraudulent or other inappropriate behavior and discourage such activities by other carriers. For example, on October 30, 1998, the Commission proposed a \$1.36 million forfeiture against a long distance company for its "disturbing pattern of callous disregard" for the Commission's rules and regulations for allegedly slamming 18 consumers.<sup>9/</sup> Should carriers engage in fraudulent or misleading billing practices, the Commission can impose monetary and other penalties against those carriers. Rather than increasing its regulatory reach over carriers' operations -- particularly wireless providers attempting to differentiate their products and services, and distinguish themselves to compete in the marketplace -- the Commission can effectively protect consumers from fraudulent practices through its enforcement powers. This would allow the Commission to encourage competition while protecting consumers from unscrupulous or misleading practices.

**D. Cost Recovery and Phased-In Implementation**

The Commission should not ignore the competitive realities of the wireless marketplace and seek to regulate the manner in which competitive wireless providers bill their customers. Certainly the Commission must recognize that there may be significant compliance costs that carriers have no choice but to recover from their

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<sup>9/</sup> News Release, "FCC Proposes \$1.36 Million Forfeiture Against Amer-I-Net for Apparently Using Forged Authorization Forms to Slam Customers," Report No. CC 98-40, released October 30, 1998.



customers. As explained above, wireless billing systems are highly complex and delicate technological operations. A billing system is the sum of numerous, interconnected parts, where a change in one can significantly impact numerous other functions. The more complicated the system becomes, the greater the likelihood that a change in one facet can have unforeseen impacts on other parts of the system.<sup>10/</sup> Thus, the Commission's imposition of specific requirements not currently incorporated in a wireless carrier's system, for the purpose of protecting consumers, would be very expensive and time-consuming. Similar to the cost recovery mechanism created for wireless E911 services, the Commission should permit recovery of these costs.

The Commission's proposals, moreover, potentially would create confusion for wireless consumers. For example, the Commission's proposal that a carrier separately state each and every charge and the basis for the charge could result in outrageous complexities, as the system would be required to handle innumerable details. Any attempt to adjust one charge -- pursuant to a change in governmental fees, for example -- could adversely impact every other charge on the bill. The numerous state and local charges, fees and taxes -- not to mention the additional charges and taxes associated with international calls -- could result in a bill that is much too long and complex. Sales taxes, utility taxes, 911/E911

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<sup>10/</sup> This issue is somewhat related to the difficulties the Commission faces in resolving outstanding petitions for reconsideration on CPNI audit and flagging requirements. See Order, CC Docket No. 96-115, FCC 98-239, released September 24, 1998, staying the CPNI implementation deadline for six months.

fees, apportionment of federal Universal Service Fund assessments, state USF assessments, rights-of-way fees, "infrastructure maintenance" fees (as in Illinois), franchise fees, state regulatory fees, Telephone Relay Services fees, and Lifeline charges are just examples of some of the items that the Commission, states and localities are assessing on the wireless industry. Separately stating each of these charges along with a description each and every month potentially could overwhelm consumers, resulting in ultimately useless "information overload." Add to those charges, the separately-stated and described charges associated with each and every roaming phone call, and consumers would be presented with a long and complex monthly bill.

Requiring pages and pages of explanation is not only potentially confusing to customers, but will increase the cost of providing wireless service. Producing a long, complicated bill, requiring pages of material, will increase processing time, thereby slowing the production and distribution of customer bills, and the longer, more complex bill will generate even more customer inquiries and complaints. Delaying the delivery of bills, moreover, adversely impacts carriers' cash flows while production costs will be increased not only by the complicated billing process, but also the additional reams of paper required to produce bills. All of these costs, which would be associated with governmental mandates to protect consumers, should be recoverable by the carrier. Given the limited justification for imposing these

new burdens on a competitive industry, adoption of billing rules is ill-advised.

**IV. CONCLUSION**

For the reasons discussed herein, Nextel respectfully requests that the Commission carefully consider the objective differences between the wireline and wireless industries, and refrain from imposing rules and regulations on the customer billing of wireless services.

Respectfully submitted,

By, 

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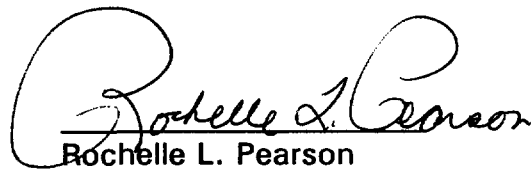
Date: November 13, 1998

## CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 13th day of November, 1998, caused a copy of the attached Comments of Nextel Communications, Inc. to be served hand-delivery to the following:

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